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October 12, 2007

Ms. Tracy Egoscue, Executive Officer
Regional Water Quality Control Board – Los Angeles
320 West 4th Street, Suite 200
Los Angeles, CA 90013

SECOND DRAFT VENTURA COUNTY MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT (NPDES PERMIT No. CAS004002)

Dear Ms. Egoscue:

Thank you for the opportunity to comment on the second draft National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System permit for the Ventura Countywide Stormwater Program. The City of Oxnard is a copermittee on the permit, and staff have worked with other copermittees on the development of county-wide comments on the draft permit, and concur with the majority of those comments transmitted to you under separate cover.

Although some of the comments submitted for the first draft have been addressed in this second draft document, the majority have not. We therefore reference our earlier comments, dated March 5, 2007, and reiterate our need for a staff report to evaluate permit findings and requirements. We also submit the following comments on the second draft for your consideration:

Waste Discharge Requirements

1. Title – the title of the permit has changed from "Waste Discharge Requirements for Storm Water Discharges from..." to "Waste Discharge Requirements for Storm water (Wet Weather) and Non-storm Water (Dry Weather) Discharges from..." Since non-stormwater discharges are to be effectively prohibited, unless exempted or already permitted by the Regional Board, having a second layer of permitting doesn't make sense. We recommend changing the title back.

2. B.3., Nature of Discharge – common sources of pollutants should include PAHs from fires in the Nation Forest Service areas.

3. B.4., Nature of Discharge – this finding contains three separate thoughts; that substances found in municipal storm water can harm ecosystems, that high volumes and velocities can impact aquatic ecosystems, and that municipal point sources from urbanized area are a leading cause of impairment of surface waters in California. We recommend separating the first two thoughts into their own findings, and deleting the third as non-supported.

4. B.10., Nature of Discharge – states that "Trash and debris are pervasive pollutants which accumulate in streams, rivers, bys and ocean beaches..." There is no definition of "debris" in the permit; we recommend adding a definition.

5. C.5., Permit Background – there doesn't seem to be a need for this finding. We recommend its deletion, or an explanation of its need in the staff report.

6. D.1., Permit Coverage – the two sentences of this finding seem to contradict each other. We recommend that the finding be clarified in the final document, and that the area of coverage be clearly noted on a map. Additionally, the finding needs to be supported in the staff report.

7. D.2., Permit Coverage – states that the "Permittees covered under this Order were designated on a system-wide basis under Phase I of the CWA..." The copermittees proactively proposed a county-wide program to implement the stormwater program in a consistent and cost effective manner. The finding should be supported in the staff report by the documentation that there was a system-wide designation of all of the copermittees, or the finding should be deleted.

8. E.6., Federal, State and Regional Regulations – states that the "Order incorporates a provision to implement and enforce approved WLAs for municipal storm water discharges and requires amending the SMP after pollutant loads have been allocated and approved." It doesn't.

9. E.7., Federal, State and Regional Regulations – states that "WLAs must be incorporated into permit conditions as mandated by federal laws and regulations. More specifically, WLAs must be translated into "end of pipe" effluent limitations and conditions in NPDES permits that are consistent with the requirements and assumptions of the TMDL (*U.S. EPA November 22, 2002 Memorandum on Storm Water Sources NPDES Permit Requirements Based on WLAs Established by TMDLs*)." While the EPA memorandum does say to make the WLAs written as permit requirements consistent with the adopted TMDLs, there is no mention of "end of pipe" effluent limitations as WLAs. We recommend deleting that portion of the finding, or providing the missing reference being used to support the finding.

10. E.11., Federal, State and Regional Regulations – describes the sources of non-point pollution regulated under CZARA (agriculture, silviculture, urban, marinas, and hydromodification), and states that the "Waste Discharge Requirement addresses the management measures required for the urban category and the hydromodification category..." We recommend that the statement regarding hydromodification be deleted or modified to show that the permit only addresses hydromodification from urban impacts. Additionally, the findings should include information on how the other non-point sources are addressed. Finding B.18. regarding the Conditional Waiver of Waste Discharge Requirements for

Discharges from Irrigated Lands should be a part of this finding, and not a "Nature of Discharge".

11. E.18., Federal, State and Regional Regulations – discusses a Board Resolution making changes to the implementation of Standard Urban Storm Water Mitigation Plans under the Los Angeles County stormwater permit. As this doesn't apply to the Ventura County program, we recommend deletion of this finding.

12. F.11., Implementation – cites the State Board's *Policy for the Implementation of Toxics Standards in Inland Surface Waters, Enclosed Bays and Estuaries of California (SIP)* as the justification for minimum levels in the draft permit. Footnote number 1 of the SIP states that "This policy does not apply to regulation of storm water discharges." We recommend deletion of this finding and the requirements for minimum levels in the permit.

13. F.12., Implementation – describes the development of "Municipal Action Levels (MALs)" using a national data set. We recommend that a sound discussion of the rationale for the MALs be included in the staff report, especially in light of the voluminous amount of region-specific monitoring data.

14. F.13., Implementation – describes the standardized BMP database, and states that BMP performance data from the database was used to establish that it is practicable for municipalities to achieve the MALs. We recommend a thorough discussion of this evaluation in the staff report.

15. Part 1.A.1., Prohibitions - Discharges – prohibits discharges into and from the MS4 in a manner causing or contributing to a condition of pollution, contamination or nuisance. The MS4 owner/operator has very little, if any, control over discharges that the regulatory agency might deem fit for an NPDES permit to discharge to our collection system. For example, the general permit for *Discharges of Groundwater from Potable Water Wells to Surface Waters* allows a daily maximum of 1000 ug/L of copper, while the proposed MAL for copper is 70.7 and the California Toxic Rule limit, which is hardness dependent, is considerably lower. The MS4 owner/operator would be liable for permit violations over which they have no responsibility. We recommend deletion of this prohibition.

16. Part 2.1., Municipal Storm Water Discharge Limitations – places numeric effluent limits on stormwater discharges based on a national data set. This is contrary to guidance provided by the June 2006 Blue Ribbon Panel Report on the technical validity of establishing numeric limits. We recommend using the action level approach to identify "bad actors" as recommended by the Panel's report.

17. Part 2.5., Municipal Storm Water Discharge Limitations – shifts the compliance point from "end-of-pipe" to mass emission stations in the absence of representative monitoring points. Overall, the mass emission stations measure very little urban runoff. Currently, the Program compares water quality standards

against the results of the monitoring program sampling and analyses, including the mass emission stations; however, this exercise provides information on the health of the watershed, not on the urban runoff contribution.

18. Part 3.2., Receiving Water Limitations – states that "Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance." We recommend an expanded discussion of what the permittee is not responsible for (e.g., agricultural discharge, NPDES permittees including individual, general, and stormwater permittees, and other state and federal facilities).

19. Part 4.B.1.(a), Legal Authority – requires the permittees to possess the necessary legal authority to prohibit illicit connections and illicit discharges. Since the permit's definition of illicit discharge is "any engineered conveyance that is connected to the storm drain system without a permit or municipal authorization", it would include agricultural drainage. This discharge cannot be prohibited under the permittee's NPDES urban runoff permit. We recommend deletion of this requirement, or modification of the definition of illicit connection.

20. Part 5.A.2.(a)(3), Best Management Practice Substitution – provides a mechanism to propose a site-specific BMP for Executive Officer approval, but requires that the "alternative BMP or program will be implemented within a similar period of time". Experience has shown that Executive Officer approval times vary considerably, depending on staffing levels and other priorities; however, approval, and implementation, of a substitute BMP will most likely be outside of what might be considered "a similar period of time." We recommend deletion of this requirement.

21. Part 5.D.I.2.(a), Commercial Facilities – requires that the permittees inspect all facilities identified in Part 5 D.2. (reference unknown) twice during the permit cycle. Our current program requires the identification and inspection of "targeted facilities", which are known or potential contributors of pollutants of concern to our receiving waters. Since our targeted facilities are not reflected in the list of critical commercial facilities, we are concerned that local data and information was not used in establishing these critical sources, and that the proposed inspection requirements under this section will take resources away from what we consider a very valuable program to address potential impairment in local waterbodies. We recommend including the rationale for these critical sources in the staff report, or the deletion of the requirement.

22. Part 6, Total Maximum Daily Loads – WLAs should be incorporated as adopted by the Regional Board, per guidance provided in the U.S. EPA's November 22, 2002, *Memorandum on Storm Water Sources NPDES Permit Requirements Based on WLAs Established by TMDLs,* including the implementation requirements. We recommend modification of these sections to conform to the adopted TMDLs.

23. Part 6.IV.1(b)(2), Monitoring (wet weather) – requires monitoring and compliance at "end of pipe" of major outfalls. This is contrary to the U.S. EPA's November 22, 2002, *Memorandum on Storm Water Sources NPDES Permit Requirements Based on WLAs Established by TMDLs,* and should be deleted. The monitoring program and QAPP for most of the TMDLs have been submitted to the Regional Board for approval. The TMDLs do not require measurement or compliance at end of pipe. We recommend that these requirements be deleted.

24. Part 8, Definitions – receiving water, water body, waterbody, waterways, waters, and watercourse are used throughout the draft permit almost interchangeably; however, not all are defined. As reflected in our comments to the first draft permit, the document needs to have more consistency in its application of terms, and the important terms from a regulatory standpoint, need clear definitions. This is most crucial for the term receiving water.

Monitoring Program

25. (F-1 of 20), 1. - states that "The primary objectives of the Monitoring Program include, but are not limited to:
    (a) Assessing the chemical, physical, and biological impacts of storm water discharges on receiving waters resulting from urban storm water discharges.
    (b) Assessing the overall health and evaluating long-term trends in receiving water quality.
    (c) Assessing compliance with effluent limitations and water quality objectives.
    (d) Characterization of the quality of storm water discharges.
    (e) Identifying sources of pollutants.
    (f) Measuring and improving the effectiveness of measures implemented under this Order."

    The permit should follow the philosophy of the Stormwater Monitoring Coalition (SMC) in their Model Monitoring Program:

    "Monitoring should be focused on decision making; data not helpful in making a decision about clearly defined regulatory, management, or technical issues should not be collected."

    The Model Monitoring Program, developed by representatives of three regional boards, municipal permittees representing six counties, Heal the Bay, and SCCWRP presented the Core Management Questions:

    - Are conditions in receiving waters protective, or likely to be protective, of beneficial uses?
    - What is the extent and magnitude of the current or potential receiving water problems?
    - What is the relative urban runoff contribution to the receiving water problem(s)?

- What are the sources to urban runoff that contribute to receiving water problems?
- Are conditions in receiving waters getting better or worse?

Answering these management questions should be the primary objective of the monitoring program. These questions were incorporated as the means for measurability and accountability of stormwater programs suggested by the California Stormwater Quality Association (CASQA) in their white paper "*An Introduction to Stormwater Program Effectiveness Assessment*", and submitted as part of their comments on the draft permits. We recommend changing this section of the monitoring program to be consistent with these approaches that were developed in a stakeholder process in which you've participated.

26. (F-1 of 20), A.I.1. - requires relocation of the mass emission station for the Santa Clara River watershed. Copermittees have consistently commented that the mass emission stations for natural waterways are difficult to implement in the lower watersheds. It is not clear which management question is being addressed by mass emission stations placed above the major urban dischargers, but adding end-of-pipe monitoring for a few stations in the urban areas would not make the information from the mass emission stations any more valuable. The mass emission stations do act as watershed monitoring stations that are effective in addressing the first two management questions, and additional end-of-pipe monitoring can begin to answer the questions about urban runoff contributions to the watershed; however, this requires a paradigm shift from the compliance-based approach of the draft monitoring program, as proposed.

27. (F-2 of 20), 9. – states that "Grab samples shall be taken for pathogen indicators and oil and grease, only." We recommend evaluating an apparent conflict between this requirement and 40 CFR Part 136.

28. (F-3 of 20), **B. Aquatic Toxicity Monitoring (Wet Weather)** - provides that:

"1. The objective of aquatic toxicity monitoring is to evaluate if storm water (wet weather) discharges are causing or contributing to acute and/or chronic toxic impacts on aquatic life by the following:

i. Toxicity testing at mass emission stations is to be evaluated using marine test organisms to assess impacts on the marine or estuarine environments."

Copermittees have frequently commented on the inappropriateness of using marine test organisms to evaluate toxicity of samples collected from freshwater environments further up in the watershed. We suggest a change in the toxicity test species.

29. (F-4 of 20), **B.** 3. Toxicity Identification Evaluations (TIE) – requires that:

"(a) The Principal Permittee shall complete acute and/ or chronic Phase I (Toxicity Characterization Procedures) TIEs for all sites showing 90 percent or more toxicity to any 1-test organism in the first year."

This is a confusing requirement. We suggest modifying the TIE requirement to clarify expectations.

30. (F-8 of 20), **C. Total Maximum Daily Load Monitoring For Storm Water (Wet Weather) and Non-Storm Water (Dry Weather) Discharges** – requires a monitoring program to evaluate end-of-pipe stormwater discharges. These requirements conflict with the U.S. EPA November 22, 2002, *Memorandum on Storm Water Sources NPDES Permit Requirements Based on WLAs Established by TMDLs*, which requires that the WLA and implementation plan be consistent with the adopted TMDL. In implementing the TDML, stakeholders have proposed monitoring programs and QAPPs that evaluate the effectiveness of management practices to reduce the pollutants of concern in order to meet in-stream WLAs. Requiring an additional monitoring program under the stormwater program redirects resources without an added benefit to water quality.

31. (F-13 of 20), **D. Trash and Debris Study – states that:**

"I. The Principal Permittee shall conduct the trash and debris study to accomplish the following objectives:
   i. Quantitatively assess the types and amount of trash and debris on the coastal areas and beaches within the Ventura County.
   ii. Identify areas impaired for trash and debris, and to develop control strategies.
1. The Principal Permittee and Copermittees shall implement a trash and debris study for the following areas:
   (a) Channel Islands Waterfront.
   (b) Ormond Wetland/ Lagoon/ Beach."

The areal extents of these two studies are not defined in the monitoring program. Additionally, the study of trash in the Ormond wetland, lagoon, and beach are problematic, as they pose a treat of an endangered species "take" while performing the studies.

32. (F-14 of 20), **E. Pyrethroid Insecticides Study** – requires that:

I. The Principal Permittee shall perform a Pyrethroid Insecticides study to accomplish the following objectives:
   i. Evaluate whether tributaries are toxic to aquatic organisms.

ii. Evaluate whether Pyrethroid Insecticide concentrations are at or approaching levels known to be toxic to sediment-dwelling aquatic organisms.
iii. Prioritize drainage and sub-drainage areas where Best Management Practices need to be implemented, if necessary.

Evaluation of pesticides for use in the State of California comes under the purview of the California Department of Pesticide Regulation. As a part of their evaluation of new pesticides, like those in the pyrethroid class, water quality and toxicity tests are made on the pesticides. We suggest that the Regional and State Board staff work with this agency during the registration process to ensure that pesticides are not put in use if there is a relatively high certainty of violating narrative water quality standards.

In summary, the draft municipal permit was not designed to implement an effective stormwater program, was not designed to integrate with existing TMDL or non-point source programs, was not developed in a stakeholder process, and did not follow recognized strategies instituted by the federal regulations, EPA guidance, State Water Resources Control Board draft policy, or the Regional Board's own Basin Plan. As always, we are interested in working with Regional Board staff on building a program that will be successful in maintaining or improving water quality in Ventura County.

If you have any questions regarding our comments on the draft stormwater permit, please feel free to call me at (805) 271-2205, or contact Mark Pumford, Technical Services Manager, at (805) 271-2220.

Sincerely,

for Mark S. Norris
Assistant Public Works Director

c: Wendy Phillips, Regional Water Quality Control Board – Los Angeles
Xavier Swamikannu, Regional Water Quality Control Board – Los Angeles

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